



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to establish the
California Institute for Climate Solutions.

Rulemaking 07-09-008
(Filed September 20, 2007)

**OPENING COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES ON PROPOSED DECISION ESTABLISHING
CALIFORNIA INSTITUTE FOR CLIMATE SOLUTIONS**

BETH MOORE
Project Coordinator
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Phone: (415) 703-1784
Fax: (415) 703-2905
Email: blm@cpuc.ca.gov

MARION PELEO
Staff Counsel
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Phone: (415) 703-2130
Fax: (415) 703-2262
Email: map@cpuc.ca.gov

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**OPENING COMMENTS OF THE DIVISION OF RATEPAYER
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In accordance with Rule 14.3 the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") submits its opening comments on the Draft Proposed Decision ("PD") of Commissioner Peevey establishing the California Institute for Climate Solutions ("Institute" or "CICS").

I. INTRODUCTION

DRA remains concerned that the Commission is considering authorizing electric and natural gas utilities to collect monies from ratepayers and remit them to the University of California ("UC") for research efforts, when the scope of the research is not clear and may extend well beyond issues related to utility service. As argued in this proceeding, DRA recommends any such effort should be initiated by the Legislature where other sources of revenue could be identified to help fund California's effort to grapple with climate change. Notwithstanding DRA's fundamental concern, these comments seek to identify changes to the PD which would improve the proposed Institute to be funded by ratepayers.

II. DISCUSSION

A. The Decision should provide guidance with respect to additional fund raising.

The PD states that the “urgency of the issue” necessitates immediate action, rather than waiting “for collective state-wide action to establish the framework for the Institute and authorize funding.”¹ Ratepayer funding, the PD contends, is therefore appropriate because it can be leveraged more quickly.²

The PD acknowledges that “ratepayers should not be the sole source of funding for the Institute.”³ Missing from the PD, however, is language that would allow the sole funding burden to be lifted from ratepayers in the future. It is not sufficient to merely state that other funding sources should be leveraged; the PD should include specific language directing the Institute’s Governing Board to pursue legislative and/or private financial support for the Institute.

If the underlying justification for ratepayer funding is the need for quick action, then ratepayer monies should be used as the initial source of funds and then be replaced by taxpayer or private monies. Going forward, as the Commission evaluates the success of the Institute, one measurement should be how successful the Institute has been in securing funding sources from other than ratepayers. A lack of additional funding sources may reflect a lack of planning by the Institute, or that others investing in climate change research believe that their money is better spent elsewhere. DRA recommends that the PD be modified to require annual reporting on efforts to identify funding sources other than ratepayers and the success or failure of securing those funds.

¹ Proposed Decision (“PD”) of Commissioner Peevey, Rulemaking 07-09-008, mailed Feb. 11, 2008, *mimeo.* at 17.

² See PD at 17.

³ PD at 17.

B. The Program Inventory, Roadmap, and biennial reports should be publicly available and open to outside input, where appropriate.

The PD has attempted to develop mechanisms that will prevent duplication of research efforts, maximize ratepayer benefits, and make the Institute accountable for its spending. However, DRA is concerned that the language in the PD is not specific enough. As written, the directives run the risk of becoming merely bureaucratic exercises that will add little value to the Institute. DRA requests the following changes to the PD.

1. Inventory of climate change-related programs.

The PD directs the Institute to develop an inventory of publicly-funded research and education efforts related to climate change.⁴ DRA requests that the Institute specifically identify ratepayer-funded programs in this inventory. DRA cautions against equating “publicly-funded” with “ratepayer-funded.” This distinction is important for assessing how different populations are bearing the costs of research and education programs. It is important to track all publicly-funded climate-related programs, but programs that are funded wholly or in part by ratepayer monies should be noted.

In addition, this inventory should include all publicly-administered, privately-funded programs in California. There are significant research efforts underway that are funded by the private sector. In the interest of avoiding duplicative research efforts, it is important that these privately-funded research efforts are tracked as well. DRA understands that the inventory cannot feasibly be an exhaustive list of all private research initiatives. However, privately-funded programs that are publicly administered can (and should) be included in the inventory. The Energy Biosciences Institute (“EBI”) is one example. EBI is privately funded by British Petroleum, but administered by UC Berkeley and the University of Illinois Urbana-Champaign. The EBI focuses on biofuel research, a topic strongly related to the goals of the Institute, and it is thus important that EBI and others like it are included in the inventory.

⁴ See PD at 8.

Moreover, the PD directs that the inventory be submitted to the Commission's Executive Director. DRA requests that this inventory be made publicly available and served to all parties on this service list, and those parties should have the opportunity to comment for purposes of identifying programs that may have been overlooked. The inventory is meant to avoid redundancy in research and facilitate coordination among agencies and other institutions.⁵ To this end, the real value of the inventory will not be merely its existence, but rather the sharing of the information it contains.⁶

Finally, the inventory should be periodically updated. Over the course of ten years, it is likely that new research programs will emerge, others will disappear, and the focus of some will change. In order to keep the Governing Board apprised of current research efforts, the inventory should be updated every three to four years. Keeping the inventory current will help the Governing Board make informed decisions about research priorities and continue to foster a collaborative, rather than duplicative, nature of the Institute.

2. Roadmap index identifying areas of ratepayer benefits.

The PD directs the Institute to create a Roadmap index to identify and rank areas of ratepayer benefit.⁷ DRA was encouraged to see the PD include a provision that implies favoring research relevant to ratepayers. However, the language in the PD must be strengthened to ensure that this requirement actually results in its intended purpose.

It is critical that the Institute serve a draft of this index to interested groups and provide an opportunity for comments. As written in the PD, the identification and ranking of ratepayer-relevant research is dependent on the judgment of Institute staff.

⁵ See PD at 8.

⁶ To the extent feasible, this inventory should be coordinated with similar activity resulting from the Commission's directive to the utilities in the recently opened long term procurement plan rulemaking to provide a report of GHG reduction programs "under the Commission's purview or funded by utility ratepayers." See Rulemaking 08-02-007, Order Instituting Rulemaking to Integrate and Refine Procurement Policies Underlying Long-Term Procurement Plans, Feb. 20, 2008, *mimeo.* at 10-11 and Appendix A.

There are no safeguards to ensure that the staff is in fact qualified to make these judgments, or to ensure that those rankings cannot be aligned with other research priorities of the Institute staff. Consumer groups such as The Utility Reform Network, the Utility Consumer Action Network, and DRA are well-qualified to advise on which programs will be most beneficial to ratepayers.

3. Public availability of Institute reports.

The PD requires various reports and documents from the Institute, including biennial progress reports, the inventory of publicly-funded programs, and others. In the interest of transparency and proper governance of the Institute, DRA requests that these reports be publicly available.

C. The Commission should require a budget request from the Institute.

The chosen level of funding – \$600 million over ten years – still does not have sufficient justification. The PD cites comments from California State University, University of Southern California, and other academic institutions claiming that this level of funding is actually modest compared to what may be needed to combat climate change.⁸ The thrust of these comments appears to be: \$600 million is not enough so that sum is a reasonable amount. There are two problems with this justification. First, these institutions are the organizations that will benefit from the funding of the Institute, and may not be best situated to assess an appropriate funding level. Second, the authorization of \$600 million to fund the Institute should be supported by a specific forecast of projected expenses consistent with well established rules for Commission decision-making.

The PD quotes a decline of publicly-funded energy research and development in California as further justification for this level of funding. However, this point ignores

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⁷ See PD at 16.

⁸ See PD, pp. 17-18.

the fact that recent increased concern over climate change is now resulting in large investments in climate-related research from public and private, state and federal sources. In DRA's view, the record continues to lack sufficient information to assess whether \$600 million is an appropriate level of funding for ratepayers of regulated electric and natural gas utilities to contribute to the Institute. Before signing over such a large amount to the Institute, the Commission should require that the Institute demonstrate that it can spend the money efficiently and prudently. DRA is concerned that such a large influx of guaranteed money could potentially cause a situation where the Institute has incentive to spend money on less relevant issues simply to use up the funding. Therefore, DRA requests that the PD be modified to authorize funding *up to* \$60 million a year for 10 years, pending a biennial budget request from the Institute.²

D. Additional modifications should be made to the PD.

In addition to the issues raised above, DRA requests that the following changes be made to the PD.

Consider retaining independent counsel on intellectual property issues. The PD recommends the creation of a Technology Transfer Subcommittee ("TTS") to address the issue of intellectual property rights. The PD states that initially all grant agreements should be consistent with the Bayh-Dole framework, but leaves open other possibilities for treatment of intellectual property once the TTS is established. DRA believes it is important to staff this subcommittee so that a fair and balanced representation of interests is present. Retaining the services of independent, intellectual-property counsel would further provide unbiased input into these important and complex issues.

Factual correction: On page 15, the PD states that DRA advocated for a portion of the Institute's costs to be borne by utility shareholders. In its opening comments, DRA merely acknowledged that shareholders were one of many funding sources that could be

² See Workshop Comments of the Division of Ratepayer Advocates, R.07-09-008, Jan. 7, 2008, p.5.

considered in lieu of ratepayer monies. DRA did not specifically endorse shareholders as the appropriate source of funding for the Institute.

III. CONCLUSION

For the foregoing reasons, DRA requests that its proposed modifications be incorporated into the Commission's decision.

Respectfully submitted,

/s/ MARION PELEO

Marion Peleo
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Phone: (415) 703-2130
Fax: (415) 703-2262

March 3, 2008

**PROPOSED MODIFICATIONS TO FINDINGS OF FACT,
CONCLUSIONS OF LAW AND TEXT OF DECISION**

Add the following new Findings of Fact after existing Finding of Fact 2:

- In developing the Roadmap, it is necessary for the CICS to first complete an inventory of climate change-related research and education efforts in California, identifying publicly-funded programs; ratepayer-funded programs; and publicly-administered, privately-funded programs.
- We find it reasonable to require that the inventory be made publicly available and served to all parties on the service list, and to provide interested parties the opportunity to comment and identify programs omitted from the inventory.
- It is also reasonable to require an updated inventory every three to four years, to assist the Governing Board in making informed decisions based on current information.
- It is necessary to require CICS to serve to the service list the draft index to the Roadmap identifying and ranking areas of benefit, and to provide interested parties the opportunity to comment and advise regarding the most beneficial programs to ratepayers.

Add the following new Findings of Fact after existing Finding of Fact 6:

- We find it reasonable to require the Governing Board to pursue state legislation for taxpayer funding of the Institute and to pursue funding from private sources, to replace ratepayer funding as soon as feasible.
- We find it reasonable to require the Governing Board to report annually to the Commission details of the Institute's efforts to secure funding from sources other than the ratepayers of Commission-regulated utilities, including a list of the alternative funding sources and whether or not the Institute was successful in securing funding from these sources.

Modify existing Finding of Fact 7 as follows (shown in italics):

7. We find that ~~the proposed~~ a budget of *up to* \$60 million a year over ten years is appropriate and reasonable for the CICS investment, *pending a biennial budget request from the CICS*, especially if it is leveraged with additional funds from private and public sources.

Add new Finding of Fact after existing Finding of Fact 7:

We find it reasonable to require the CICS to submit on a biennial basis a detailed budget request with supporting documentation, to facilitate the Commission's review of proposed CICS activities in upcoming budget cycles.

Modify Conclusion of Law 2 as follows (shown in italics):

2. A total of *up to* \$60 million a year over ten years of ratepayer funding should be allocated to the CICS, *pending a biennial budget request*, with direction to the Institute to use this money as leverage to secure additional funds from public and private sources.

Modify Conclusion of Law 7 as follows (shown in italics):

7. The Institute should allocate the *up to* \$60 million in funding for each year of the Institute's operation among the Institute's activities as follows....

Omit "DRA" from the following sentence in Section 3.2.1 Funding (PD, *mimeo.* at 15):

In addition to arguing that a tax would be more appropriate than a rate surcharge, parties, including TURN, Greenlining, [add "and"] CEC ~~and DRA~~, maintain that utility shareholders should bear a portion of the costs.

Add the following language (shown in italics) to the penultimate paragraph in Section 5. Intellectual Property (PD, *mimeo.* at 51):

Because these are complex issues, requiring specialized knowledge and experience, the Technology Transfer Subcommittee will be expected to establish a means of seeking input from professionals with relevant expertise, *such as by retaining the services of independent, intellectual property counsel.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document
“**OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION ESTABLISHING CALIFORNIA INSTITUTE
FOR CLIMATE SOLUTIONS**” in **R.07-09-008** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed in San Francisco, California, on the **3rd** day of **March, 2008**.

/s/ REBECCA ROJO

Rebecca Rojo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

SERVICE LIST

R.07-09-008

donaldgilligan@comcast.net
chilen@sppc.com
npedersen@hanmor.com
rwhall@usc.edu
eambos@calstate.edu
dave.rutledge@caltech.edu
douglass@energyattorney.com
amber.dean@sce.com
case.admin@sce.com
howard.gollay@sce.com
laura.genao@sce.com
atrial@sempra.com
khassan@sempra.com
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map@cpuc.ca.gov
dwang@nrdc.org
ek@a-klaw.com
bcragg@goodinmacbride.com
irene@igc.org
mpa@a-klaw.com
cjw5@pge.com
Jim.sweeney@stanford.edu
aarvin@stanford.edu
lhorton@stanford.edu
lex@consumercal.org
phanschén@mofo.com
lloyd.lee@ucop.edu
samuelk@greenlining.org
thaliag@greenlining.org
elvine@lbl.gov
fteng@svlg.net
Audra.Hartmann@Dynergy.com
vwelch@environmentaldefense.org
rriebert@cbbf.com
atrowbridge@daycartermurphy.com
Ryan.Flynn@pacificorp.com
keith.mccrea@sablaw.com
Cynthia.A.Fonner@constellation.com
ghinners@reliant.com
ghinners@reliant.com
bmcquown@reliant.com
emello@sppc.com
Leilani.johnson@ladwp.com
robert.pettinato@ladwp.com

dakinports@semprautilities.com
rprince@semprautilities.com
asteel@hanmor.com
mabernst@usc.edu
eklinkner@ci.pasadena.ca.us
rzhang@cityofpasadena.net
sendo@ci.pasadena.ca.us
hdaily@caltech.edu
slins@ci.glendale.ca.us
bjeider@ci.burbank.ca.us
rmorillo@ci.burbank.ca.us
mike.montoya@sce.com
liddell@energyattorney.com
ygross@sempraglobal.com
kmkiener@cox.net
dniehaus@semprautilities.com
jmgarber@iid.com
mecampbell@iid.com
gdehart@anaheim.net
ssciortino@anaheim.net
Diane_Fellman@fpl.com
achang@nrdc.org
filings@a-klaw.com
lfletcher@nrdc.org
nes@a-klaw.com
scarter@nrdc.org
brbc@pge.com
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jscancarelli@flk.com
jwiedman@goodinmacbride.com
mmattes@nossaman.com
alho@pge.com
ELL5@pge.com
KEBD@pge.com
MEAE@pge.com
sscb@pge.com
SEHC@pge.com
wbooth@booth-law.com
Ellen.Auriti@ucop.edu
jody_london_consulting@earthlink.net
mrw@mrwassoc.com
cchen@ucsusa.org

jesser@greenlining.org
robertg@greenlining.org
mwbeck@lbl.gov
knotsund@berkeley.edu
lynn@lmaconsulting.com
bmcc@mccarthyllaw.com
sberlin@mccarthyllaw.com
jweil@aglet.org
abb@eslawfirm.com
eemblem@3Elntinc.net
sfischer@arb.ca.gov
mclaughlin@braunlegal.com
creheis@wsps.org
jonathan.changus@asm.ca.gov
dkk@eslawfirm.com
edward.randolph@asm.ca.gov
jluckhardt@downeybrand.com
jdh@eslawfirm.com
mgarcia@arb.ca.gov
Vvillalo@usc.edu
www@eslawfirm.com
lmh@eslawfirm.com
egw@a-klaw.com
californiadockets@pacificorp.com
kyle.l.davis@pacificorp.com
blm@cpuc.ca.gov
cab@cpuc.ca.gov
tam@cpuc.ca.gov
fjs@cpuc.ca.gov
jm3@cpuc.ca.gov
jjj@cpuc.ca.gov
sco@cpuc.ca.gov
sgm@cpuc.ca.gov
claufenb@energy.state.ca.us